

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

SEAN JEREMIAH JOSEPH,

Petitioner,

v.

UNITED STATES IMMIGRATION AND
NATURALIZATION SERVICE,

Respondent.

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CIVIL ACTION NO.
1:03-CV-2908-JOF

OPINION AND ORDER

This matter is before the court on Petitioner's emergency petition for a writ of habeas corpus [1]; the Report and Recommendation of Magistrate Judge Alan J. Baverman [17]; and Respondent's motion to transfer the case to the Eleventh Circuit Court of Appeals [19].

I. STATEMENT OF THE CASE

Petitioner, a native and citizen of Trinidad and a lawful permanent resident of the United States since 1991, in his emergency petition for writ of habeas corpus, seeks immediate release from his allegedly unlawful detention at the Etowah County Detention Center in Gadsden, Alabama; a stay of removal from the United States during the pendency of these proceedings; and a reversal of the order of removal against him. Petitioner was removed from the United States on January 31, 2005.

In his Report and Recommendation, filed on April 1, 2005, the Magistrate Judge first found that Petitioner's requests seeking immediate release and a stay of removal from the United States were moot. The Magistrate Judge found these claims to be moot because the Petitioner had been removed from the country. Further, the Magistrate Judge found that none of the exceptions to the mootness doctrine applied to the Petitioner's case. With regard to the Petitioner's request seeking a reversal of the order of removal against him, the Magistrate Judge found the Petitioner's arguments unpersuasive. The Magistrate Judge recommended that the instant petition for a writ of habeas corpus be dismissed in part as moot and denied in part. Petitioner filed no objections. Respondent, however, filed a motion to transfer petition to the Eleventh Circuit Court of Appeals and supplemental response to habeas corpus petition.

II. DISCUSSION

As Magistrate Judge Baverman correctly noted, Petitioner's request for immediate release and for a stay of removal are moot because Petitioner has been removed from the country. Having read and considered Petitioner's motion and the Report and Recommendation of the Magistrate Judge, this court ADOPTS the Report and Recommendation as the Order of this court which DENIES AS MOOT Petitioner's requests seeking immediate release and a stay of removal from the United States.

With regard to Petitioner's request seeking reversal of the order of removal against him, a recent change in the controlling law denies this court jurisdiction over the matter and

requires this court to transfer this action. On May 11, 2005, Congress passed the REAL ID Act of 2005. In a relevant section it states: “If an alien's case, brought under section 2241 of title 28, United States Code, and challenging a final administrative order of removal, deportation, or exclusion, is pending in a district court on the date of the enactment of this division [May 11, 2005], then the district court shall transfer the case (or the part of the case that challenges the order of removal, deportation, or exclusion) to the court of appeals for the circuit in which a petition for review could have been properly filed” Pub. L. 109-13, Div. B, Title I, § 106(c), 119 Stat. 231, 311 (May 11, 2005).

This section clearly applies to the Petitioner's request seeking reversal of the order of removal against him. Petitioner is an alien bringing a claim under section 2241 of title 28, part of which is challenging a final administrative order of removal. This case was pending in district court on May 11, 2005. Thus, the case should be transferred to the proper court of appeals, the Eleventh Circuit Court of Appeals. Therefore, the court GRANTS Respondent's motion to transfer part of Petitioner's emergency petition for writ of habeas corpus to the Eleventh Circuit Court of Appeals.

III. CONCLUSION

The court GRANTS Respondent's motion to transfer part of Petitioner's emergency petition for writ of habeas corpus to the Eleventh Circuit Court of Appeals [19].

The Clerk of the Court is DIRECTED to TRANSFER Petitioner's emergency petition for writ of habeas corpus [1] to the Eleventh Circuit Court of Appeals.

IT IS SO ORDERED this 12th day of December 2005.

s/ J. Owen Forrester

J. OWEN FORRESTER
SENIOR UNITED STATES DISTRICT JUDGE